

69 FR 77726, December 28, 2004

A-570-853
Changed Circumstances Review
Public Document
Office 1: S. Holland x1279

December 9, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of Changed Circumstances Review and Revocation of the Antidumping Duty Order: Bulk Aspirin from the People's Republic of China

SUMMARY

We have analyzed the comments of interested parties in the changed circumstances review of bulk aspirin from the People's Republic of China. As a result of our analysis, our preliminary finding to revoke the antidumping duty order on bulk aspirin from the People's Republic of China remains unchanged. We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is the complete list of the issues in this review for which we received comments from interested parties:

Comment 1: Revocation of the Order
Comment 2: Date of Revocation

BACKGROUND

The merchandise covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin. Bulk aspirin may be imported in two forms: as pure ortho-acetylsalicylic acid, either in crystal form or granulated into a fine powder (pharmaceutical form); or as mixed ortho-acetylsalicylic acid, combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances.

On April 30, 2004, a changed circumstances review was requested by Bimeda, Inc. ("Bimeda"), a U.S. importer of bulk aspirin. On June 24, 2004, the Department of Commerce ("the Department")

published the preliminary results of the changed circumstances review on bulk aspirin from the People's Republic of China ("PRC"). See Notice of Initiation and Preliminary Results of Changed Circumstances Review and Intent to Revoke the Antidumping Duty Order: Bulk Aspirin from the People's Republic of China, 69 FR 35286 (June 24, 2004) ("Preliminary Results").

We invited parties to comment on the Preliminary Results. On July 26, 2004, Bimeda, Rhodia, Inc., ("Rhodia"), Perrigo Company ("Perrigo"), and Shandong Xinhua Pharmaceutical Co., Ltd. ("Shandong"), all interested parties in this proceeding, filed case briefs. No rebuttal briefs were filed.

DISCUSSION OF ISSUES

Comment 1: Revocation of the Order

In the Preliminary Results, we preliminarily found that the antidumping duty order on bulk aspirin from the PRC should be revoked. Information on the record indicated that U.S. production of the domestic like product had ceased, and Rhodia, the sole domestic interested party in these proceedings, was no longer interested in maintaining the order. Bimeda agrees with the Department's preliminary finding to revoke the order.

Rhodia states that it does not have an interest in maintaining the antidumping duty order and supports Bimeda's request for revocation. Rhodia also states that before it ceased production of bulk aspirin in the United States, it produced a substantial inventory of bulk aspirin and continues to sell this inventory to customers that have yet to qualify other plants as suppliers.

According to Perrigo, a U.S. importer of bulk aspirin, there is no evidence on the record that indicates that there is a domestic producer of bulk aspirin, and therefore the Department should affirm its preliminary determination in the final results and revoke the order.

Shandong, a Chinese producer/exporter of bulk aspirin and a respondent in the original investigation, disagrees with the Department's preliminary finding to revoke the antidumping duty order. According to Shandong, Rhodia continues to sell bulk aspirin from inventory and therefore, the order continues to protect the United States industry from unfairly traded imports of subject merchandise from the PRC. Moreover, Shandong contends that as long as the domestic like product is sold from inventory in the United States, the order should be maintained.

Department's Position:

We agree with Bimeda and Perrigo that the antidumping duty order should be revoked. As we stated in the Preliminary Results, because Rhodia, the only known producer of bulk aspirin in the United States, has ceased production, we find that changed circumstances exist. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 351.216 of the Department's regulations, and may revoke an order (in whole, or in part), if it

determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief of the order, in whole or in part, or if other changed circumstances exist sufficient to warrant revocation. In this case, the evidence on the record demonstrates that Rhodia accounted for all production of the domestic like product in the United States. Moreover, Rhodia has stated that it has no interest in maintaining the antidumping duty order covering bulk aspirin from the PRC. Therefore, consistent with the Preliminary Results, we find that the facts in this case meet the Department's requirements of 351.222(g) and the decision to revoke is consistent with the Department's practice.

We disagree with Shandong's contention that, because Rhodia continues to sell out of inventory, the order should be maintained. We find the fact that Rhodia continues to sell bulk aspirin out of inventory irrelevant for the purposes of our determination in this proceeding. Because Rhodia, as the sole U.S. producer of the domestic like product, expressed no interest in the relief of the order, the Department may revoke the order. See e.g., Fresh Atlantic Salmon from Chile: Final Results of Antidumping Duty Changed Circumstances Review, Revocation of Order, and Rescission of Administrative Review, 68 FR 44043, 44044 (July 25, 2003)(U.S. salmon producers expressed no interest in the order, and the order was revoked).

Comment 2: Date of Revocation of the Order

In the Preliminary Results, the Department expressed intent to revoke the antidumping duty order effective July 1, 2003, the earliest date for which entries of bulk aspirin have not been subject to an administrative review. Bimeda argues that the effective date of revocation should be February 28, 2003, the date Rhodia ceased production of bulk aspirin in the United States.¹ Although Bimeda acknowledges that the Department generally revokes antidumping duty orders as of the date of the last completed administrative review, it argues that due to "extenuating circumstances," the Department should not use July 1, 2003, as the effective date. First, Bimeda asserts that its May 3, 2004, initiation request was submitted prior to final results of the 2002/2003 administrative review, which the Department determined to be the last completed review in the Preliminary Results. See Bulk Aspirin from the People's Republic of China: Final Results of 2002/2003 Antidumping Duty Administrative Review and Final Determination to Revoke the Order, In Part, 69 FR 24644 (June 22, 2004). Therefore, Bimeda contends that because the 2002/2003 review was not completed, it should not be used by the Department to determine the effective date for the Preliminary Results.

Second, subsequent to Rhodia's February 28, 2003, shutdown of its aspirin production facility, the Department published in the Federal Register its amended final results of the first administrative review of bulk aspirin from the PRC. See Notice of Amended Final Results of Antidumping Duty

¹ Rhodia confirmed that the final production date for the aspirin plant was February 28, 2003. See May 25, 2004, submission from Rhodia to the Department which is on file in the Department's Central Records Unit in room B-099 of the main Department building.

Administrative Review: Bulk Aspirin from the People's Republic of China, 68 FR 12036 (March 13, 2003) ("Amended Final"). Based on language in that notice, Bimeda contends it was led to believe that its entries on March 13, 2003, *i.e.*, after Rhodia ceased operations at its St. Louis plant, would be entitled to the zero-percent rate established in the amended final results. Although the Department corrected the Amended Final, it did not do so until after the completion of the third administrative review. See Notice of Correction to the Final Results of the Antidumping Duty Administrative Review: Bulk Aspirin from the People's Republic of China, 69 FR 41784 (July 12, 2004) ("Correction Notice").

Third, Bimeda points out that the Department has revoked the order with respect to both respondents from the original investigation. Furthermore, Bimeda claims that the original petitioner in these proceedings, Rhodia, has no interest in maintaining the order after February 28, 2003. Thus, Bimeda urges the Department to revoke the order effective February 28, 2003, for the final results.

Rhodia states that it does not have any interest in maintaining the antidumping duty order after February 28, 2003. Moreover, it supports Bimeda's request for revocation and liquidation of any unliquidated entries of subject merchandise made after February 28, 2003.

There were no other comments on the effective date of revocation.

Department's Position:

We disagree with Bimeda and Rhodia that the effective date of revocation should be February 28, 2003. It is the Department's practice to revoke an antidumping duty order so that the effective date of revocation covers entries that have not been subject to a completed administrative review. See e.g., Notice of the Final Results of Changed Circumstances Review and Revocation of the Antidumping Duty Order: Coumarin from the People's Republic of China, 69 FR 24122 (May 3, 2004); see also, Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Notice of Final Results of Changed Circumstances Review, Revocation of the Antidumping Duty Order, and Rescission of Administrative Reviews, 67 FR 19551 (April 22, 2002). If an administrative review has not been requested, the Department's practice is to revoke the order after the most recent period for which the Department has issued assessment instructions to U.S. Customs and Border Protection. See e.g., Certain Cut-to Length Carbon Quality Steel Plate Products from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Determination to Revoke the Order in Part, 68 FR 9975 (March 3, 2003) ("CTL Plate from Japan"). In the instant case, no administrative review was requested for the administrative review period July 1, 2003, through June 30, 2004. See 19 C.F.R. 351.213(b); and Bulk Aspirin from the People's Republic of China: Final Results of 2002/2003 Antidumping Duty Administrative Review and Final Determination to Revoke the Order in Part, 69 FR 24644 (June 22, 2004). Thus, July 1, 2003, is the earliest date for which there are unreviewed and unliquidated entries. See CTL Plate from Japan. Therefore, in accordance with the Department's practice, and consistent with the Preliminary Results,

we find that July 1, 2003, is the appropriate and relevant effective date for the revocation of the antidumping duty order on bulk aspirin from the PRC.

Finally, the Department notes that the Department stated in the preliminary and final results of the 2000-2001 period of review, as well as in the cash deposit instructions issued after the amended final and publicly posted on the Customs Electronic Bulletin Board, that all other PRC exporters, which had not obtained separate rates in prior reviews, would have the same cash deposit rate as the PRC-wide rate established in the original investigation: 144.02 percent. See Correction Notice, 69 FR at 41784.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of this changed circumstances review and revocation of the antidumping duty order on bulk aspirin from the PRC in the Federal Register.

AGREE _____ DISAGREE _____

James J. Jochum
Assistant Secretary
for Import Administration

Date